



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the **19th day of November, 2003**

United Air Lines, Inc.

**Compliance with 49 U.S.C. §§40127, 41310,
41702 and 41712**

Served: November 19, 2003

Docket OST-2003-14194

CONSENT ORDER

This order closes an investigation into United Air Lines, Inc.'s (United) compliance with Federal statutes prohibiting air carriers from subjecting any air traveler to discrimination on the basis of race, color, national origin, religion, sex or ancestry. The consent order directs United to cease and desist from future violations and to provide civil rights training to its flight and cabin crews and customer service representatives.

Shortly after the terrorist attacks of September 11, 2001, the Office of Aviation Enforcement and Proceedings (Enforcement Office) began to receive complaints against United (and other carriers) from individuals removed from flights or denied boarding on flights allegedly because those persons were, or were perceived to be, of Arab, Middle Eastern or Southeast Asian descent and/or Muslim. Because of concerns about these complaints, the Enforcement Office requested information from United regarding incidents occurring between September 11, 2001, and December 31, 2001, involving the removal or denied boarding of a passenger for safety/security reasons.

Federal law is clear. An airline cannot refuse passage to an individual because of that person's race, color, national origin, religion, sex, or ancestry. 49 U.S.C. § 40127(a). Similarly, 49 U.S.C. § 41310 prohibits air carriers and foreign air carriers from engaging in unreasonable discrimination against individuals on flights between the U.S. and foreign points, 49 U.S.C. § 41702 requires that U.S. carriers provide safe and adequate transportation, and 49 U.S.C. § 41712 prohibits unfair and deceptive practices and, therefore, prohibits invidiously discriminatory practices on the part of U.S. carriers.

In responding to the Enforcement Office's concerns, United firmly maintains that no passenger was ever removed from a flight or denied boarding under circumstances amounting to status-based discrimination (i.e., based on a passenger's ethnic background or national origin). In its defense, United notes that it has a demonstrated longstanding commitment to non-discrimination and has developed extensive procedures and policies that underscore that commitment.

Moreover, United points out that it has expended substantial resources to educate and sensitize its employees on applicable non-discrimination laws and the company's related procedures and policies. United believes that those procedures and policies are appropriate, comprehensive, and effective, and that its employees complied with them, and with applicable law, in the cases in question.

United also emphasizes that it considers the issue of aircraft security, as well as the issue of non-discrimination, to be of the utmost importance. In that regard, United notes that Federal law provides air carriers the authority and responsibility to "refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety." 49 U.S.C. § 44902(b). United has been firm in its position that it has not engaged in status-based discrimination in the exercise of its discretion under that statute.

United further emphasizes that all of the alleged incidents occurred shortly after September 11, 2001—a period of unprecedented security concerns and tension for all participants in the nation's air transportation system, especially United, one of the two carriers that lost employees, passengers and aircraft in the attacks. During the period following September 11, United states that it was scrupulous in exercising its authority and responsibility under section 44902(b), and remains so today. As one of two carriers that were direct victims of the attack, United points out that it is particularly sensitive to claims that its employees acted in disregard of the law regarding aircraft security following September 11. United, having thoroughly investigated the complaints in question, remains resolute in its conviction that none of its employees, in conducting themselves as they did under extremely difficult and historically unprecedented circumstances, acted wrongly or with intent to violate any law.

United also notes that it is undergoing a unique and critical period in its history as it strives to reorganize to emerge from Chapter 11 bankruptcy proceedings. For that reason, United states that, even though it continues to deny strenuously that any violation of Federal law occurred, it made more sense to settle this matter with the Enforcement Office than to pursue costly and protracted litigation to vindicate the actions of its employees. This is especially the case as the Enforcement Office is willing to settle the matter without the assessment of civil penalties, but rather a commitment by United to incorporate civil rights training into existing training programs for pilots, flight attendants, and customer service representatives.¹ According to United, since it is already fully committed to vigorous compliance with the country's civil rights laws, this training will serve simply to reinforce the company's commitment to these core civil rights protections, an objective to which United is fully committed in any event.

¹ The Enforcement Office has issued a separate complaint against American Airlines, Inc. ("American") alleging that American unlawfully discriminated against certain passengers after September 11, 2001, in violation of 49 U.S.C. §§ 40127, 41310, 41702, and 41712. The allegations against American are similar in fact and time to those the Enforcement Office has raised here against United. American is contesting the allegations in a formal proceeding before an Administrative Law Judge (Docket OST-03-15046). With respect to that proceeding, the Enforcement Office recognizes that any final decision could ultimately impact the issues being considered here. The Enforcement Office acknowledges that, in the event there is a final decision issued in that proceeding, United has the right to file a Motion with the Department under 14 CFR § 302.419 to modify or set aside this order if it believes the decision justifies such request. In the event that there is a settlement in the American case that is more favorable to American than the terms of this order are to United, the Enforcement Office will not oppose such motion.

The Enforcement Office recognizes that the September 11 terrorist attacks were unprecedented and clearly created a difficult situation for the airline industry, acting pursuant to FAA-approved security programs, in trying to protect passengers and crew from further attacks. Nonetheless, based on its review of the post-September 11 incidents in which United removed or failed to board passengers purportedly for safety/security reasons, the Enforcement Office believes that some passengers were denied boarding or were removed from flights because, or principally because, of the passenger's ethnic background. Even though the Enforcement Office does not dispute that the United employees involved believed they were acting to ensure the safety and security of passengers and crew, the Enforcement Office believes some passengers were denied boarding or removed from flights in a manner inconsistent with the carrier's non-discrimination obligations under Federal law.

The Enforcement Office has carefully considered all the information provided by United, but continues to believe that enforcement action is warranted. This proceeding is an action to enforce the Department of Transportation's police and regulatory powers and, as such, is not subject to the automatic stay provided for in the Bankruptcy Code. 11 U.S.C. § 362(b)(4). In order to avoid litigation, the Enforcement Office and United have reached a settlement of this matter. Without admitting any violations of the law occurred, United consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 40127, 41310, 41702, and 41712 and to provide civil rights training to its flight and cabin crewmembers, as well as its customer service representatives. The Enforcement Office believes that this settlement is appropriate and serves the public interest and creates an incentive for all carriers to comply fully with the civil rights laws enforced by the Department of Transportation.²

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that United Air Lines, Inc., acted in a manner inconsistent with the requirements of 49 U.S.C. §§ 40127, 41310, 41702 and 41712 when it removed from or refused to board on its flights certain individuals as discussed above;
3. We order United Air Lines, Inc., and all other entities owned and controlled by it or under common ownership and control with it, and their successors and assigns to cease

² Additionally, this consent order will settle any and all complaints that could be asserted against United alleging violations of 49 U.S.C. §§ 41310, 41702, 41705 or 41712 arising out of or relating to incidents where United removed from a flight or failed to board a passenger on the basis of the passenger's assumed ethnic background or national origin occurring on or after September 11, 2001, and through the service date of this order. The Department of Transportation filed a proof of claim in the United Air Lines, Inc. bankruptcy proceeding on June 9, 2003, designated as Claim No. 42440 in the amount of \$1,220,000. Upon notification by United of a final and non-appealable order of the Bankruptcy Court approving this Consent Order, the Department of Transportation will withdraw its proof of claim.

and desist from future violations of 49 U.S.C. §§ 40127, 41310, 41702 and 41712, as described above;

4. We order United Air Lines, Inc., and its successors and assigns to provide annual civil rights training to its public contact employees, including its flight and cabin crewmembers and airport customer service representatives, for three years from the date of this order at a total cost of no less than \$1.5 million.³ Within 14 months of the service date of this order, and every 12 months thereafter for two subsequent years, United shall submit a sworn statement from an appropriate company official certifying that all flight and cabin crewmembers and customer service representatives have received the civil rights training required under this order;
5. Any failure by United to conduct the training in accordance with ordering paragraph 4 or to document it adequately to the Enforcement Office shall constitute a continuing violation of this consent order and subject United to enforcement action; and
6. This order makes no findings of violations with respect to any individual incident of alleged civil rights violations and the findings herein shall have no effect in any proceeding not before the Department of Transportation.
7. Pursuant to Paragraph 2a of the Order Authorizing and Approving an Omnibus Procedure for Settling and Allowing Certain Claims and Causes of Action Brought by or Against the Debtors in a Judicial, Administrative, Arbitral or Other Action or Proceeding [Docket No. 911], entered by the United States Bankruptcy Court for the Northern District of Illinois on January 15, 2003, promptly upon docketing of the Consent Order by the Department of Transportation, United Air Lines, Inc., shall duly file a Notice seeking approval of this Consent Order upon 10 days negative notice. If no objection is received by United Air Lines, Inc., within 10 days of the filing and service of the Notice, United Air Lines, Inc.'s estate in bankruptcy will be bound by this Consent Order without further action by the Bankruptcy Court. If an objection is raised within the 10-day notice period and ultimately is resolved in United Air Lines, Inc.'s favor, the Consent Order will become effective upon entry of a court order denying the objection. If an objection is raised within the 10-day notice period and ultimately is resolved in favor of the objector, this Consent Order shall be deemed to have been void *ab initio*.

³ The Department has contracted with a company to develop an easy to understand technical assistance manual that details the responsibilities of air carriers under Federal nondiscrimination statutes and to develop a model training program, which will include, at a minimum, an overview of the applicable laws and regulations, a cultural awareness component and a job-specific training segment. To support the Department in its mission of ensuring nondiscrimination in air transportation, United has agreed to share with the Department's contractors its civil rights training materials for possible inclusion in the Department's technical assistance manual and model training program.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

By:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*